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In re Application of : OFFICE OF PETITIONS
Julstrom, et al. :
Filed: April 1, 2004 : ON PETITION
Application No. 10/816,119 :
Atty. Dkt. No.: 12624US06 :

This decision in response to the "PETITION UNDER 37 C.F.R. § 1.182 RESPONSE TO NOTICE OF OMITTED ITEM OF NONPROVISIONAL APPLICATION," filed October 12, 2004, requesting that Fig. 30B be accepted as part of the disclosure of the instant application.

The application was filed April 1, 2004. The Notice to File Missing Parts of Nonprovisional Application ("Notice") mailed August 9, 2004 indicated, *inter alia*, that the application had been accorded a filing date but that Fig. 30B appeared to have been omitted from the specification.

The Notice permits applicant to either: (1) promptly establish prior receipt in the PTO of the drawing(s) at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing drawings were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted drawings in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted drawing(s) with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such drawing(s) and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the Notice (37 CFR 1.181(f)).

In response to the Notice, petitioners submitted the omitted item. Petitioners request, in effect, that Fig. 30B be entered into the record.

It is noted that the specification for the instant application contains an incorporation statement. An incorporation by reference statement may be relied upon to permit the entering of a portion of

the prior application into the continuation or divisional application when the portion of the prior application has been inadvertently omitted from the submitted application papers in the continuation or divisional application. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuation or divisional application to include any subject matter in such prior application(s), without the need for a petition provided the continuation or divisional application is entitled to a filing date notwithstanding the incorporation by reference. See, MPEP 201.06(c).

Based on petitioner's representation that Fig. 30B is part of the disclosure of application No. 10/356,290 and the entire disclosure of application No. 10/356,290 was specifically incorporated by reference in the present application on April 1, 2004, it appears that Fig. 30B was present in the Office on April 1, 2004, albeit in the file of another application, i.e., application No. 10/356,290. Therefore, the application is entitled to a filing date of April 1, 2004. However, petitioners are advised to promptly submit a preliminary amendment requesting entry of the omitted figure prior to the issuance of the first Office action on the merits.

The required petition fee of \$130.00 will not be refunded since the petition was necessary to correct petitioner's filing error.

In view of the above, the petition is **DISMISSED**.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of April 1, 2004 using the papers present on that day.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3205.



Alesia M. Brown
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